IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 19TH MARCH 2007 / 28TH PHALGUNA 1928

WP(C).No. 26429 of 2003(U)

PETITIONER:

C.M.NARAYANAN, S/O. CHATHU,
KOLIYOT HOUSE, CHALIYAMKADAVU
(VIA) PONMENI, KOZHIKODE DISTRICT,
PIN 673 541.

BY ADV. SRI.T.SETHUMADHAVAN
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR

RESPONDENTS:

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1. THE GOVERNMENT OF KERALA, REPRESENTED
BY THE SECRETARY, LABOUR AND REHABILITATION
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DISTRICT EXECUTIVE OFFICER,
KERALA MOTOR TRANSPORT WORKERS WELFARE
FUND BOARD, KOZHIKODE -11.

3. THE TAHSILDAR (RR), VATAKARA,
KOZHIKODE.

4. V.HANISH, S/O. SRINIVASAN,
VALIYAPURAYIL HOUSE, OCHIYAM AMSOM,
VATAKARA TALUK, KOZHIKODE DISTRICT.

5. MOTTAMMAL UDAYAKUMAR
S/O. GOPALAN, CHOKLI AMSOM, THALASSERY TALUK,
CANNANORE DISTRICT.

R1 AND R3 BY G.P. SMT. R. BINDU
R2 BY SC SRI. P. RAMAKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF AGREEMENT DATED 28.1.1997 BETWEEN THE PETITIONER AND FOURTH RESPONDENT.

EXT.P2 TRUE COPY OF AGREEMENT DATED 25.2.1998 BETWEEN THE PETITIONER AND FIFTH RESPONDENT.

EXT.P3 TRUE COPY OF PROVISIONAL DETERMINATION ORDER FOR THE YEAR 1995-96 DATED 4.8.99 ISSUED BY THE SECOND RESPONDENT.

EXT.P4 TRUE COPY OF DO. FOR THE YEAR 1996-97

EXT.P5 TRUE COPY OF DO FOR THE YEAR 1997-98

EXT.P6 TRUE COPY OF DO. FOR THE YEAR 1998-99

EXT.P7 TRUE COPY OF THE OBJECTION DATED 19.9.99 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P8 TRUE COPY OF THE FINAL DETERMINATION ORDER FOR THE YEAR 1994-95 ISSUEDBY THE 2ND RESPONDENT.

EXT.P9 TRUE COPY OF DO. FOR THE YEARS 1995-96, 1996-97, 1997-98 AND 1998-99.

EXT.P10 TRUE COPY OF NOTICE OF REVENUE RECOVERY ISSUED BY THE THIRD RESPONDENT TO THE PETITIONER DATED 17.7.2003

EXT.P11 TRUE COPY OF REVENUE RECOVERY NOTICE ISSUED BY THE THIRD RESPONDENT TO THE PETITIONER DATED 18.7.2003

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

W.P.C. NO. 26429 OF 2003

Dated this the 19th day of March, 2007

JUDGMENT

Petitioner is challenging final determination orders produced as Exts. P8 and P9 determining motor transport workers welfare fund liability for the years 1994-1999. According to counsel for the petitioner, petitioner purchased the vehicle on 28.1.1997 and sold it on 25.2.1998 and therefore liability should be limited to one year, whereas the demand is for five years. Petitioner has made the person from whom petitioner purchased the vehicle and the person to whom he sold the vehicle as respondents 4 and 5 in the W.P. Standing counsel submitted that employees working in the bus gave statement on the date of inspection that is on 5.6.1997 that petitioner is the registered owner and therefore he was issued notice. Even though opportunity was given, petitioner did not avail the same and consequently liability is determined based on evidence furnished by workers. However, I find inspection was on a date when petitioner was admittedly the operating owner of the vehicle. Therefore employees' statement is

consistent with petitioner's own case that vehicle was operated by him for one year. In the circumstances, one more opportunity can be granted to the petitioner but on condition that petitioner remits one-fifth of the total liability determined as petitioner was admittedly operating the vehicle for one year. Petitioner is directed to deposit one-fifth of the total liability determined along with a copy of this judgment before the 2nd respondent within one month from now. If payment is made and a copy of judgment is produced, the second respondent will issue notice to respondents 4 and 5, petitioner and any other person presently operating the vehicle, and take evidence from the employees and redetermine the liability for the period during with petitioner operated the vehicle, and for the earlier and subsequent periods within three months thereafter. Liability for each and every owner should be determined with reference to the period of operation and payment made by the petitioner will be adjusted towards liability payable by him and balance if any should be recovered from the petitioner and others found liable or if any excess is paid, the same should be refunded to the petitioner. Revenue recovery proceedings

will be kept in abeyance for one month now for payment of one fifth of the total liability as above, and if payment is made, recovery proceedings will remain stayed till fresh orders are issued by the second respondent as stated above.

W.P. is disposed of as above.

(C.N.RAMACHANDRAN NAIR)
Judge